U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] Public Copy

File: [redacted] Office: Vermont Service Center Date: AUG 1 2001

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myrna L. Rosenberg

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is described as a religious organization operating a small mosque and other facilities. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a "chanter" at a salary of $175 per week.

The petition was initially approved by the center director. The center director later revoked the approval finding that the beneficiary's voluntary work with the petitioner as its chanter, while engaged in a full-time secular occupation as a taxi driver, did not satisfy the requirement of the statute and of 8 C.F.R. 204.5(m)(1) that he have been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

The Associate Commissioner, by and through the Director, Administrative Appeals Office (AAO), affirmed the decision of the center director and dismissed the appeal. The AAO further noted that the petitioner failed to adequately establish that the proposed position was a qualifying religious occupation.

On motion, counsel for the petitioner argues, in pertinent part, that:

> In this decision, there was no finding or basis in law or regulations and further is contradicted by Matter of -, EAC 93 056 50872 (AAU September 15, 1993); and Matter of Greater Emanuel Temple, Inc., EAC 93 100 51628 (AAU October 27, 1993). To Counsel's knowledge there is not a precedent decision published by the Administrative Appeals Unit, which shows otherwise.

According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. To prevail on a motion for reconsideration, the petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." Id. According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

Counsel's argument is not persuasive. First, counsel mischaracterized the decision. The AAO decision clearly sets forth its interpretation of the existing regulations in finding that

voluntary activities with one's religious organization, while engaged in a secular occupation, does not constitute qualifying experience in a religious occupation for the purpose of special immigrant classification.

Second, counsel refers to two unpublished administrative decisions of this Service pertaining to religious workers. While it has not been shown that the facts of the cases are similar, the unpublished administrative decisions relied on by counsel do not have binding precedential value. Only decisions published and designated precedents by the Associate Commissioner are binding on Service officers. See 8 C.F.R. 103.3(c). In addition, the Service is not bound by past decisions which may have been issued in error. See National Labor Relations Bd. v. Seven-up Bottling Co. of Miami, 344 U.S. 344, 349 (1953).

Third, counsel is correct in observing that there are no precedents addressing the issue of voluntary activities satisfying the prior experience requirement for lay religious workers. In the absence of a precedent, the AAO's interpretation of the existing regulations will not be disturbed. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Ex., July 13, 1998).

Counsel has not shown that the analysis in the prior decision was an incorrect application of law as supported by pertinent precedent decisions. Therefore, the motion must be dismissed.

ORDER: The motion is dismissed; the decision of November 16, 2000 is affirmed.